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Letter dated 25 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 September 2002 (S/2002/997).

The Counter-Terrorism Committee has received the attached supplementary report from Madagascar, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 17 April 2003 from Permanent Representative of Madagascar to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: French]

In response to your letters dated 27 August 2002 and 5 February 2003, I have the honour to transmit herewith the supplementary report of the Government of Madagascar on the implementation of Security Council resolution 1373 (2001) (see attachment).

This report supplements the one transmitted to you in February 2002 and details all the measures taken by the Malagasy Government to combat terrorism and related acts effectively both at the national level and in the framework of international cooperation.

(*Signed*) Zina **Andrianarivelo-Razafy**
Ambassador

Attachment

Supplementary report of the Republic of Madagascar on the implementation of Security Council resolution 1373 (2001) concerning counter-terrorism

Security Council resolution 1373 (2001) dated 28 September 2001 is intended to strengthen the prevention of terrorism and the fight against it. In order to do so, it calls on United Nations Member States to collaborate in a wide range of areas, such as the suppression of the financing of terrorism, early warning, cooperation with regard to criminal investigations and the exchange of information concerning the risk of terrorist attacks. It also calls upon the Governments of Member States to prepare reports on the steps they have taken in this regard. A preliminary version of the report submitted by the Government of Madagascar was transmitted to the Security Council Committee established pursuant to resolution 1373 (2001) on 21 February 2002 (see S/2002/203). After considering the report, the Committee requested additional information on a number of issues (see S/2002/997). Therefore, this supplementary report takes into consideration the comments of the Committee, which were transmitted to the Mission of the Republic of Madagascar to the United Nations in New York in its letter dated 27 August 2002 (S/AC.40/2002/MS/OC.141). The report has been prepared in accordance with the guidelines set out by the Chairman of the Counter-Terrorism Committee.

The events of 11 September 2001 in the United States of America prompted Madagascar to reiterate its condemnation of all acts of international terrorism in all their forms. Following the tragedy, specific measures designed to strengthen domestic security were taken, inter alia:

- General measures for surveillance and monitoring of the movement of persons within the national territory;
- Enhanced surveillance of port and airport infrastructure;
- Strengthening of existing security arrangements for all embassies;
- Surveillance and special protection for the American nationals scattered across the island, including Peace Corps volunteers, and nationals of the States members of the North Atlantic Treaty Organization (NATO);
- Enhanced information gathering on any signs of an attack on foreign nationals, public property or works of art;
- Border controls and coastal monitoring to guard against possible infiltration, and so on.

Madagascar does not have a separate anti-terrorism unit. The police, the army and the national gendarmerie all take part, jointly and severally, in the fight against terrorism and organized crime. Depending on the nature and seriousness of the disturbances of public order and security, their competence may be limited or extended to the entire Malagasy territory.

Thus, the Rapid Response Group (GIR) attached to police headquarters in Antananarivo is called into action when riots occur in the capital. The Special Response Security Group of the Gendarmerie (G-SIS), the Anti-Gang Unit (SAG), the Response Force attached to the National Police and the Mixed Operational

Command Group (EMMO) have nationwide competence and have outposts in each provincial capital, including in the decentralized communities. It should be noted that EMMO is composed of personnel from the three bodies having primary responsibility for public security, namely, the army, the gendarmerie and the police. The Anti-Gang Unit, established in 1989 and attached to the Directorate-General of the National Police, also plays an important role in the fight against terrorism. More specifically, it is responsible for:

- Intervening in the case of serious incidents requiring the use of specific techniques and methods in order to overpower particularly dangerous elements;
- Assisting, where necessary, any counter-terrorism unit to take selective action;
- Contributing, particularly in cooperation with the Directorate of the National Police College and the Police Training Centre, to the training and re-training of police officers in counter-terrorism.

The exchange of information is an important aspect of counter-terrorism activities. Madagascar is contributing to this through the National Central Office of Interpol, which has ongoing contact with other Member States. To a lesser extent, the Anti-Terrorism Division, set up in 2002 within the Ministry of Public Security (Territorial Surveillance), is also contributing to the exchange of information with the special services of a number of countries, such as the United States, France and the Russian Federation.

Finally, it should be stressed that in the current state of Malagasy positive law, there is a significant gap as regards the definition of terrorism and the actual suppression of terrorist acts. Certain provisions of the Penal Code concerning the external security of the State and criminal association are applicable to acts of terrorism, but the specific nature and complexity of these acts would suggest that they should be classified as separate offences. In particular, the absence of specific texts relating to money-laundering or the freezing of suspicious accounts is a significant shortcoming that may be exploited with impunity by terrorist groups. The need to modernize Malagasy law is also apparent in view of the positions adopted by the Government, which has, inter alia, made a commitment to contribute to strengthening international cooperation in order to prevent, combat and eventually eradicate the scourge of terrorism. Therefore, once Madagascar has acceded to all the conventions and protocols concerning the fight against all forms of terrorism, which it is now in the process of doing, the Government must incorporate them into domestic law by adopting the appropriate laws and regulations.

Paragraph 1

Subparagraph (a) — What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to 1 (d)?

Madagascar signed the International Convention for the Suppression of the Financing of Terrorism on 2 October 2001. The procedure for ratification of the Convention is under way (see para. 3 (d)). Madagascar officials participated in a workshop organized by the United Nations International Drug Control Programme in Vienna in September 1999 as part of the effort to draft a bill on money-

laundering. The various Malagasy services involved (the National Police, the National Gendarmerie, the armed forces, the Interministerial Drug Control Coordination Committee and the Central Bank) have developed a money-laundering bill that can be applied to all offences characterized as transnational criminal offences. The bill was submitted to decision-making bodies in accordance with domestic legislative procedures. For the time being, Act No. 97-039 of 4 November 1999 on control of narcotic drugs, psychotropic substances and precursors in Madagascar provides for punishment of money-laundering linked to drug trafficking.

Generally, such offences are punishable under the Penal Code provisions on breaches of the external security of the State and on criminal associations, such as armed bands (arts. 75-108 and art. 265). With regard to efforts to combat terrorism, such measures can be used when the need arises and can replace those provided for in Security Council resolution 1373 (2001) and the Convention on the Suppression of the Financing of Terrorism until the Government of Madagascar adopts more appropriate laws and regulations.

Subparagraph (b) — What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

The Madagascar Penal Code has no specific provisions on terrorism and its related activities. Moreover, it suffers from a narrow definition of terrorism. Nevertheless, in cases that can be resolved through measures enacted under the Code, decisions can always be taken and offences should not go unpunished.

Subparagraph (c) — What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Act No. 95-030 of 22 February 1995 on monitoring the activities of credit institutions requires Malagasy banks to observe a code of ethics and integrity. In that regard, article 40 of the Act states that the Banking and Financial Oversight Commission, in close cooperation with the Association of Credit Institutions, should specify a "code of professional conduct, particularly concerning relations with clients, other banks and the authorities, and on the prevention of criminal money-laundering". Banks that violate the code run the risk of sanctions, including closure.

The judicial practice of Madagascar allows for the freezing of funds obtained through corruption, misappropriation of public funds, arms trafficking and other illegal activities. The measure has been applied to the bank accounts of people who have been accused of acquiring ill-gotten wealth. At the international level, that practice is possible within the framework of cooperation between Malagasy judges and their counterparts abroad, as shown by the freezing of assets in Europe of persons who have been implicated in offences with repercussions elsewhere. Conversely, a judge in Madagascar can receive letters rogatory requesting that he freeze the illegal assets in Malagasy banks of Malagasy nationals or foreigners. The above-mentioned money-laundering bill expressly provides for freezing suspicious accounts.

Subparagraph (d) — What measures exist to prohibit the activities listed in this subparagraph?

There are no provisions in Malagasy law that deal specifically with the activities listed in this subparagraph. Nevertheless, such acts can be treated as abetting terrorist or criminal acts, and their perpetrators incur the same penalties as the primary perpetrators of the resulting acts.

Paragraph 2

Subparagraph (a) — What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Currently, Malagasy positive law does not specifically mention terrorism. As in other countries, that notion has no legal definition in Madagascar. Nevertheless, since Malagasy judges are required to rule in cases involving terrorism in order to ensure that justice is done, several laws and regulations are applicable to terrorist acts.

Penalties

Such acts are severely punished by the provisions of the Penal Code relating to attempts against the external security of the State and criminal association, which provide for sentences ranging from imprisonment and fines to the death penalty, especially in the case of offences against the external security of the State and treason. In addition to these penalties, local banishment is a possible additional sentence. It should be noted that the concepts of crimes and offences, as well as the notion of attempt, are defined in article 1 of the Penal Code.

Book III, Title 1, Chapter 1, Section 1 on crimes and offences against the external security of the State

> Article 76: Any national who wilfully destroys or damages a ship, aerial navigation appliance, equipment, construction or installation used for the purpose of national defence shall be convicted of treason and punished by the death penalty. The article provides for a penalty of imprisonment for participation in an act committed by a group and by an overt use of force, aimed at wilfully destroying and damaging equipment or supplies intended for national defence or used for that purpose.
>
> Article 77: The acts described in the preceding article shall be characterized as espionage if perpetrated by a foreigner.
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> Article 82: Any national or foreigner shall be convicted of a crime against the external security of the State if, by using a disguise or a false name, or by hiding his identity or nationality, he succeeds in entering a fortress, defence works, military post, arsenal, building, aerial navigation appliance, military vehicle, military or naval establishment, etc.

The death penalty is the punishment for crimes committed under articles 76 and 77 and, in general, attacks threatening the external security of the State

committed in times of peace are punishable by a term of imprisonment of one to five years and a fine of 180,000 to 1.8 million Malagasy francs. The crimes mentioned in article 82 may be punishable by up to 10 years' imprisonment and a fine of 3.6 million Malagasy francs.

Book III, Title 1, Chapter 1, Section 2 on crimes and offences against the internal security of the State

Crimes against the internal security of the State are defined as those aiming to disturb public order through civil war, the illegal use of armed force, and destruction and looting of public sites.

Article 91, first paragraph: All attacks with the intention of inciting civil war or causing devastation, massacre and looting in one or more local administrative areas are punishable by the death penalty.

Article 91, third paragraph: Acts and manoeuvres likely to compromise public safety or cause serious political disturbances and hatred of the Government are punishable by a term of imprisonment of one to five years and may incur the suspension of civic, civil and family rights, and local banishment.

Article 95: Anyone who destroys buildings, warehouses, arsenals, vessels or other property belonging to the State by arson or mines shall be punished by the death penalty.

Book III, Title 1, Chapter 3, Section 4 on resistance, disobedience and other breaches committed against public authority

Articles 210 to 218: All attacks, violent resistance and assaults against the police are characterized as constituting the crime of rebellion. If the rebellion is committed by more than 20 persons, those convicted shall incur a penalty of hard labour for a specific term. If they carried arms, they shall be punished by a term of imprisonment. If the rebellion is committed by 3 to 20 armed persons, those convicted shall be liable to a term of imprisonment of six months to two years. Rebellion led by one or two armed persons shall be punishable by a term of imprisonment of six months to two years and, if no arms are used, of six days to six months. In all cases, in addition to a penalty of imprisonment, fines of 25,000 to 100,000 Malagasy francs may be imposed on those convicted.

Book III, Title 2, Chapter 2, Section 3 on destruction of private property

Article 434: Anyone convicted of wilful destruction by fire of buildings, ships, boats, warehouses, building sites while inhabited or serving as dwellings, cars or wagons whether carrying passengers or not but forming part of a convoy shall be punished by the death penalty. Wilful destruction of buildings, ships, boats, warehouses, building sites which are uninhabited or not designated for occupancy shall be punishable by hard labour if the objects do not belong to the perpetrator of the crime and by hard labour for a specific term where there is injury to others. Anyone who wilfully ignites any object which is placed in such a way as to cause the spread of fire to the objects mentioned, whether the perpetrator uses his own or another's property, shall

incur the same penalty as if the fire had been set directly. In all cases, the wilful setting of a fire which results in the death of one or more persons, injury or disability shall incur the death penalty.

Article 435: A sentence of the death penalty or hard labour shall also be incurred for the wilful destruction, in whole or in part, or the attempted destruction by a mine or other explosive substance, of buildings, dwellings, dykes, roads, ships, boats, any type of vehicle, warehouses, building sites or their outbuildings, bridges, public or private roadways and, in general, real or personal property of any type whatsoever. Furthermore, placing of an explosive device on a public or private road with criminal intent shall be considered equivalent to premeditated murder.

Article 436: The threat of arson or destruction by mine or any other explosive substance is punishable by a term of imprisonment of two to five years and a fine of 25,000 to 225,000 Malagasy francs, suspension of civic, civil and family rights and local banishment, with an option to waive local banishment if the threat was not accompanied by any orders or conditions.

Article 437 bis (Ordinance No. 77-036 of 29 June 1977): Destruction or attempted destruction by any other means than those provided for in articles 434 and onwards of the Penal Code of buildings, dwellings, dykes, roads, ships, boats, aircraft, all types of vehicles, warehouses, building sites or their outbuildings, bridges, etc., shall be punishable by a term of imprisonment of 5 to 10 years.

Article 458: Wilful destruction, degradation or attempted destruction or degradation by fire or any other means, in whole or in part, of any type of vehicle belonging to others shall be punishable by a term of imprisonment of two to five years and a fine of 25,000 to 1 million Malagasy francs, without prejudice to the application of the provisions of articles 434 and 435.

Book III, Title II, Chapter 1, Section 1 on murder, other capital crimes and threats of attack against persons

Articles 302 to 304: Assassination, crimes committed with torture or acts of barbarity, and murder preceding, accompanying or following another crime are punishable by the death penalty. Murder committed in other situations is punishable by hard labour for life.

Book III, Title 2, Chapter 1 on intentional wounding and assault not characterized as murder and other intentional crimes and offences

All assaults that damage property or cause bodily harm are severely punished by law, and the penalties are set out in articles 309 to 313 of the Penal Code.

Article 309: Intentional wounding and assault resulting in a person's illness or inability to work for more than 20 days shall be punishable by a term of imprisonment of 2 to 5 years and a fine of 25,000 to 100,000 Malagasy francs. If the assault results in mutilation, amputation, blindness or other disability, the penalty incurred shall be a term of imprisonment of 5 to 10 years. Intentional assault and wounding causing death (manslaughter) shall be punishable by hard labour for a specific term.

Article 310: Intentional wounding and assault with malice aforethought or ambush shall be punishable by hard labour for life if it results in death; by hard labour for a specific term if the assault results in mutilation, amputation, the loss of the use of a limb, blindness or other disability, by a term of imprisonment of 5 to 10 years if the assault results in a person's illness or inability to work for more than 20 days.

Article 311: Wounding, assault and other violent behaviour not resulting in illness of persons or their inability to work shall be punishable by a term of imprisonment of six days to two years and a fine of 25,000 to 90,000 Malagasy francs, or by only one of these penalties, or by a term of imprisonment of two to five years and a fine of 25,000 to 150,000 Malagasy francs, if there was malice aforethought or an ambush.

Article 318, paragraph 1: Violence against persons or destruction of property as a result of a planned action overtly carried out by a group shall be punishable, without prejudice to the infliction of heavier penalties provided for by law, by a term of imprisonment of one to five years.

Book III, Title 2, Chapter 1, Section 5 on illegal arrest and confinement of individuals

Article 341: Anyone guilty of detaining another person against his will, depriving him of his liberty, detaining him or illegally confining him, and anyone who provides premises for such detention or illegal confinement, shall be punished by hard labour for a specific term.

Article 342: Such penalty shall be increased to hard labour for life where the detention or illegal confinement was for more than a month.

Article 343: The penalty shall be reduced to a term of imprisonment of two to five years for offenders who have not yet been prosecuted and who shall have freed the persons arrested, falsely imprisoned or detained, before the tenth full day of arrest, detention, or false imprisonment is over.

Article 344: Anyone guilty of such offences shall incur a penalty of hard labour for life if the person arrested, illegally confined or detained received death threats, and shall incur a death sentence if that person was subjected to physical torture.

In addition to these provisions, it should be mentioned that article 114 of the Penal Code punishes illegal arrest carried out by a public official. The article provides that: "Where a public official or an agent or employee of the Government has committed an arbitrary act or one that threatens individual liberty, the civic rights of one of more citizens or the Constitution or has caused it to be committed, he shall be sentenced to a penalty of civic dishonour. If, however, he demonstrates that he acted on orders from his superiors, he shall be exempt from the penalty, which, in that case shall be imposed solely on the superiors who gave the orders."

Book III, Title 2, Chapter 1, Section 6, paragraph 1 on crimes and offences against children

Article 345, paragraph 1: Kidnapping and harbouring of a kidnapped child shall be punishable by imprisonment.

Article 355: Kidnapping of a minor under 15 years old by force or fraud shall be punishable by life imprisonment with hard labour. Such penalties are reduced to hard labour for a specific term if the minor is returned or found alive before the sentence. However, kidnapping shall carry the death penalty, if it results in the death of the minor.

In addition to the article cited above, Act 98-204 of 24 January 1999 amending the Penal Code with respect to paedophilia should also be mentioned. Paragraph 1 of new article 331 stipulates that non-violent indecent assault against a child of either sex under 14 years old, whether completed or attempted, shall be punished by a term of imprisonment of 5 to 10 years and a fine of 10 million to 50 million francs.

Book III, Chapter 3, Section 5, paragraph 1 on criminal association

Article 265: Any agreement reached or association formed, irrespective of its form or character or the duration or number of its members, with a view to preparing or committing crimes or misdemeanors against persons or property constitutes a crime or a misdemeanor against public order.

Article 266: Anyone belonging to such an association shall be punished by hard labour for a specific term if the acts that are carried out or planned constitute crimes, and by a term of imprisonment of six months to five years and/or a fine of 180,000 to 1,800,000 Malagasy francs if the acts constitute offences, as well as by suspension of civic, civil and family rights and local banishment.

Article 267: Anyone who knowingly and intentionally assists the perpetrators of the crimes set out in article 265, by providing them with the instruments of crime, such as means of correspondence and shelter, shall likewise be punished by a term of imprisonment. Other penalties are provided in ordinance No. 60-063 of 22 July 1960, relating to the dissolution of certain associations whose members have been convicted of subversive activities (for a detailed analysis of such penalties, see "Suppression of recruitment by terrorist groups", below).

The Code of Military Justice also contains provisions applicable to certain categories of terrorist acts.

Article 136, paragraphs 2 and 3: Persons numbering at least four on board a military ship or aircraft who rise up in arms shall incur a penalty of imprisonment of 3 to 5 years; any group of at least eight individuals who engage in armed violence shall incur a penalty of imprisonment of 5 to 10 years; and the instigators of such revolt shall incur the maximum penalty of hard labour for a specific term (20 years).

Article 137: Any persons on board a military ship or aircraft convicted of conspiring to undermine the authority of the captain or the security of the vessel or aircraft shall be punished by a term of imprisonment of 5 to 10 years. For there to be a conspiracy, there needs only to be an agreement between two or more individuals to undermine the authority of the captain, discipline or security of the ship or aircraft.

Article 154: Persons on board a military ship or aircraft who as a group caused any harm through the use of arms, overt force or violence against persons shall be punished by hard labour for life.

Article 155: Anyone on board a military ship or aircraft who deliberately sets fire to or damages by any means or renders unsuitable for immediate use structures, buildings, works, railway lines, telegraph lines or sets, telephones or telephone lines, telecommunications lines or stations, balloon posts, aeroplane docking stations, building sites, vessels, ships, and aircraft used for national service or national defence shall incur the death penalty.

Article 156: Attempting the same offences referred to in article 155 in times of peace shall carry a penalty of hard labour for a specific term.

Article 157: Anyone on board a ship or aircraft who intentionally destroys, sets fire to, causes to be destroyed or causes fire to be set to or renders unsuitable for any direct use any equipment or movable property used for national service or national defence shall also be punished by hard labour for a specific term.

Suppression of recruitment to terrorist groups

There are no legislative provisions to suppress recruitment to terrorist groups. Only criminal association is provided for and suppressed by the Penal Code. In addition to the Penal Code provisions cited earlier (arts. 265 and 266), Ordinance No. 60-063 of 23 July 1960 on the dissolution of certain associations convicted of subversive actions and the placement of their members under house arrest also contains penalties applicable to terrorist activities in Madagascar.

Article 1: The Council of Ministers shall dissolve all de jure or de facto associations or groups which:

- Provoke armed demonstrations in the streets, on the roadways or on public or private property;
- Exhibit, through their form and military structure, the character of a combat group or private militia, with the exception of government-approved military training organizations and physical education and sports associations;

Article 2: All political parties, associations or groups, and all de facto groups convicted of receiving or seeking action funds or orders from abroad shall also be dissolved by a decree of the Council of Ministers;

Article 6: Anyone who participates in the maintenance or the direct or indirect reconstitution of associations dissolved pursuant to this Ordinance shall be punished by a term of imprisonment of one to two years and a fine of 100,000 to 2 million francs.

Ordinance No. 60-077 of 3 August 1960 further prohibits the organization of de jure or de facto groups which exhibit a paramilitary character or which may be confused with the army or with the duly constituted security forces. Such groups must be dissolved. Their establishment, maintenance or reconstitution constitutes an offence punishable by a term of imprisonment of one to two months and a fine of 20,000 to 200,000 Malagasy francs.

Suppression of the supply of arms to terrorists

Act No. 69.011 of 22 July 1969 establishes a strict regime on arms with the exception of blade weapons. The manufacturing, conversion, entry, trading, use and movement of arms within Malagasy territory are regulated. Such operations are subject to monitoring and/or prior authorization by the administration. In particular, the acquisition and possession of arms is subject to a number of conditions. Applicants must be adults of unblemished moral character. They must further obtain prior authorization for the possession or acquisition of arms.

Moreover, authorizations, approvals and permits for the manufacturing, importing, exporting, trading, possession and bearing of arms are temporary. For instance, authorization for the possession of arms can be withdrawn by the administrative authorities for misconduct on the holder's part or in the event of grave circumstances resulting from the need to protect or maintain public order. In addition, in several cases, an arm can be seized or confiscated.

> Article 96: Anyone who acquires or possesses arms without having obtained the requisite authorization, and anyone who possesses an arm in violation of articles 38 and 40 of the present Act or of a decision to withdraw such authorization under the circumstances referred to in article 71, shall be punished by a term of imprisonment of two to six months and a fine of 1,000 to 50,000 Malagasy francs, or by only one of these penalties. If the offence involves the first category of arms, the penalties shall be doubled.

Subparagraph (b) — What other steps are being taken to prevent the commission of terrorist acts and, in particular, what early warning mechanisms exist to allow exchange of information with other States?

Prevention of terrorist acts

As we emphasized earlier, the State Secretariat for Public Security and the national gendarmerie play an important role in preventing and combating terrorism. Their actions include strengthening security at airports (see para. 2 (g)).

Early warning mechanism

Madagascar is a member of the International Criminal Police Organization (Interpol) which has an early warning mechanism. Exchanges of information with other member States take place over the Interpol secure network under protocol X400. The Anti-Terrorism Division of the Ministry of Public Security also participates in this early warning mechanism (see para. 3 (a)).

Subparagraph (c) — What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.

Madagascar is a contracting party to the 1951 Convention relating to the Status of Refugees, but has not acceded to the 1961 Protocol, the aim of which is the implementation of the said Convention. It has also signed the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, but has not ratified it.

Under article 38 of Decree No. 94-652 of 11 October 1994 abrogating Decree No. 66-101 of 2 March 1966 and establishing the new modalities for implementation of Act No. 62-002 on the organization and monitoring of immigration to Madagascar, refugees "are subject to the same conditions as foreign immigrants, without prejudice to the special provisions contained in the present Decree and in the international conventions, agreements or arrangements covering stateless persons and refugees to which Madagascar has acceded or may accede in the future ...". Madagascar is therefore obligated to respect the principle of non-refoulement of refugees set forth in article 33 of the 1951 Convention and it applies that principle with regard to refugees admitted to its territory. Malagasy law remains silent, however, on the possibility of expelling and excluding asylum-seekers or refugees who have been involved in terrorist acts.

Subparagraph (d) — What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

There are no legal provisions to prevent the planning in Malagasy territory of terrorist acts directed against other States or their citizens. Nevertheless, the Malagasy Government has made firm commitments to participate actively in the fight against international terrorism and the strengthening of international cooperation in this area at both the bilateral and multilateral levels. It need hardly be stated that such commitment will be reflected in the long run in the adoption of laws and regulations allowing for the suppression of terrorism in all its aspects. In the meantime, Madagascar's participation in exchanges of information over the Interpol network or in the framework of the activities of the Anti-Terrorism Division of the Ministry of Public Security will make it possible to prevent terrorist groups acting from Malagasy territory to plan acts against other States or their citizens.

Subparagraph (e) — What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

Terrorist acts do not constitute separate offences under Malagasy law. Establishing them as aggravated offences could be considered within the framework of the efforts under way to institute a common law exemption regime.

Subparagraph (f) — What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

As a member of Interpol, Madagascar participates actively in its information exchanges. Moreover, Madagascar has acceded to several international counter-terrorism instruments which provide mechanisms for mutual assistance between the various member States. In addition, an Anti-Terrorism Division has been established within the Central Territorial Surveillance Service of the Ministry of Public Security in Antananarivo. It cooperates closely with foreign intelligence services, particularly those of the United States, France and the Russian Federation, in exchanging and processing information concerning terrorism.

At the bilateral level, the fight against terrorism is a priority in Madagascar's relations with certain countries, such as France and the United States. The Franco-Malagasy cooperation agreement of 4 June 1973 contains certain provisions applicable to international terrorism. Mention should be made in particular of the provisions on extradition, whereby the two States undertake to surrender on a reciprocal basis persons in the territory of either State who have been prosecuted or convicted of terrorist acts by the authorities of the other State. The two States will not, however, extradite their respective nationals.

The strengthening of resources to enable its development partners to counter terrorism effectively has been among the cooperation priorities of the United States in recent years. In 2002 Madagascar received from the United States Government patrol boats enabling it to bolster its coastal monitoring. Likewise, United States expert missions were sent to Madagascar and other African countries to raise their awareness of the various aspects and stakes involved in the fight against terrorism. The goal of this operation is to assist them in adopting an appropriate institutional and legal framework. It should be noted that certain United Nations bodies are also endeavouring to cooperate in this area.

Lastly, Madagascar, as a signatory to the OAU Convention on the Prevention and Combating of Terrorism, ratification of which is in progress, is actively contributing to the circulation of information at this level. Such regional cooperation has proved decisive, for, owing to cooperation between the French and Tanzanian intelligence services, the Malagasy authorities were able to foil an attempted landing of French mercenaries via the United Republic of Tanzania in June 2002.

Subparagraph (g) — How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery, etc.?

For Madagascar, any movement of terrorists is prevented mainly through strict border controls at its international ports and airports and monitoring of the passage of ships through its territorial waters.

Global civil aviation safety and security measures have been implemented at national and international airports. These measures are bolstered by the State depending on the threat level, as was done in the United States following 11 September 2001, or in states of emergency. Mention should be made here of:

- Strict control of access to the various regulated zones within international airports and the establishment of a system of continuous (24-hour) surveillance of aircraft and all points of access to the runway through a substantial increase in the number of security agents;
- Heightened vigilance in the inspection and filtering of passengers and their baggage on departure. At Ivato International Airport in particular, the acquisition of a radioscopic (X-ray) detector was used to achieve this goal, along with the usual manual searches;
- Strengthened coordination of the roles of all airport agents;
- Establishment of strict regulations governing the issuance of overflight and landing permits in the territory of Madagascar. Applications for such permits

must contain detailed information on the aircraft, the crew, the nature of the flight, the itinerary and the purpose of the flight;

- Adoption of a ministerial decision requiring airlines providing international links with Madagascar to furnish the passenger manifest as soon as the aircraft leave their embarkation airports for Madagascar. Similar measures are also applied by flights departing from Madagascar for States which have adopted the same provisions, such as flights to the Comores;

- Establishment of regulated zones around strategic sites in the main population centres of Madagascar in order to prevent civilian aircraft from being used as a weapon of mass destruction. Access to such areas is subject to emergency authorization;

- Adoption of strict measures governing overflight and landing conditions for helicopters in areas occupied by a group of contiguous buildings or a concentration of people;

- Establishment during 2002 of a new arrival and departure information system at Madagascar airports serving international traffic that will manage the movement of all passengers upon departure and arrival. This system will also allow for the safe and rapid processing of forgery-proof, machine-readable passports issued by the Malagasy administration which oversees immigration and emigration. Requests from expatriates for work permits will also be subject to strict monitoring and thorough investigation.

Madagascar has also organized the issuance of residence cards, identity cards, and forgery-proof national passports. Accordingly, all requests for the issuance and renewal of national passports will now be centralized within the Ministry of Public Security in Antananarivo.

As an island nation, Madagascar also attaches great importance to the monitoring of its territorial waters and coastlines. The Ministry of Defence has a naval force (Antsiranana Naval Base) entrusted with:

- Defending the maritime approaches to Malagasy territory;

- Backstopping and support for other components of the armed forces;

- Safeguarding national interests within the territorial waters and exclusive economic zone;

- Ensuring free movement in the national maritime area;

- Backstopping and support for government agencies on administrative, police, security and economic missions formally ordered by the head of the Joint Chiefs of Staff of the Malagasy army;

- Humanitarian and assistance operations in the event of disaster, especially in the framework of international maritime obligations;

- Protecting the marine environment.

It should be specified, however, that in view of the length of Madagascar's coastline (over 5,000 kilometres) and the meagre logistical resources at the disposal of its navy, monitoring of the coasts and territorial waters is proving difficult. While the United States in 2002 provided the Government with seven patrol boats in order

to strengthen its territorial monitoring capacity, it continues to have tremendous needs in this area.

Paragraph 3

Subparagraph (a) — What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

The Interpol secure network is the only available means of transmitting and exchanging information at the multilateral level. In addition, the Anti-Terrorism Division established in 2002 within the Central Territorial Surveillance Service of the Ministry of Public Security cooperates closely with the intelligence services of several countries, including the United States, France, the Russian Federation, and so on. Its main task is to intensify information consisting of awareness and discovery of threats and activities emanating from abroad (States, individuals, various groups) that are likely to undermine the integrity and safety of the national territory, and to report them to the Government in a timely and useful manner. More specifically, the Anti-Terrorism Division engages in the following activities:

- Strengthening of monitoring and surveillance of foreign natural and legal persons considered suspicious;
- Intensification of searches for information concerning terrorism;
- Exchanges of information concerning terrorism with foreign special services, especially the intelligence services of the United States, France and the Russian Federation;
- Correspondence with provincial police departments and directorates throughout the national territory, particularly the port and airport police.

Subparagraph (b) — What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

See the answer to paragraph 3 (a) above.

Subparagraph (c) — What steps have been taken to cooperate in the areas indicated in this subparagraph?

See the answers to paragraphs 3 (a) and 2 (f).

Subparagraph (d) — What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Madagascar has ratified four international instruments concerning terrorism, as follows:

- The 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft;
- The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft;
- The 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;

– The 1988 Montreal Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

The procedure for Madagascar's accession to the other international instruments to which it is not yet a party is in progress. Following their consideration by the Council of Ministers in December 2003, the Government will submit the relevant bills to the National Assembly and Senate at their next session. The instruments in question are as follows:

– The 1973 Convention on the Suppression and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;

– The 1979 International Convention against the Taking of Hostages;

– The 1980 Convention on the Physical Protection of Nuclear Material;

– The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;

– The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf;

– The International Convention for the Suppression of Terrorist Bombings;

– The 1999 International Convention for the Suppression of the Financing of Terrorism;

– The OAU Convention on the Prevention and Combating of Terrorism.

Madagascar will also make efforts to incorporate its various international commitments in the fight against terrorism into its domestic law by adopting the relevant laws and regulations.

Subparagraph (e) — Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

Generally speaking, the development of a common law exemption regime, aimed at establishing terrorist acts in all their aspects as a separate but aggravated offence, is in progress. This bill will make it possible to fill gaps in Malagasy law with regard to the fight against terrorism. In particular, a bill on money-laundering has been submitted to the competent authorities.

Subparagraph (f) — What legislation, procedures and mechanisms are in place for ensuring asylum-seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

The entry and stay within Malagasy territory of asylum-seekers and refugees is subject to the same conditions as those applying to foreign immigrants (article 38 of Decree No. 94-652 of 11 October 1994). In particular, asylum-seekers and refugees must submit a police record showing them to be of good moral character.

Subparagraph (g) — What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

There are no legislative provisions for this purpose. Nevertheless, certain bilateral agreements, such as the aforesaid Franco-Malagasy cooperation agreement of 1973, provide for the possibility of extraditing alleged terrorists through close cooperation between the judicial authorities of the two parties.

Paragraph 4: Assistance

The implementation of Security Council resolution 1373 (2001) dated 28 September 2001 on the fight against terrorism and, in general, the international instruments to which Madagascar has acceded or may accede in the future, require an investment of material and human resources.

It is especially important to underscore the inadequacy of the logistical resources at the disposal of the various agencies taking part in the fight against terrorism, particularly the navy's lack of appropriate equipment enabling it to conduct effective surveillance of Malagasy territorial waters and intervene rapidly in the event of suspicious manoeuvres. Moreover, as a pillar of information exchanges between Madagascar and the other countries involved in the fight against terrorism, the Madagascar National Central Office of Interpol wishes to receive technical assistance in information technology, followed by a regular training cycle, in order to update the knowledge of its personnel. The Office would also like to have a public Internet site, enabling it to navigate on the public network, with a view to better monitoring of organized crime through the detection of messages and exchanges of correspondence among terrorist networks communicating over the Internet.

At a more fundamental level, tremendous difficulties are being encountered in integrating the various international legal instruments into domestic law, owing to lack of competence in the various areas affected by the fight against terrorism. Emphasis should therefore be given to technical assistance needs in the area of design and preparation of laws and regulations implementing the various international instruments referred to above.